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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,752	02/05/2004	Marc O. Woontner	14460	5715
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Maria Elisceva Suite 4 4 Militia Drive Lexington, MA 02421			EXAMINER CHANG, AUDREY Y	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MARC O. WOONTNER

Appeal No. 2009-0200
Application 10/772,752
Technology Center 2800

Mailed: April 23, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 29, 2008. A Docketing Notice was mailed and Appeal No. 2009-0200 was assigned on October 9, 2008. A review of the application has revealed that the application is not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

In the Final Rejection, mailed January 13, 2006, the Examiner objected to claims 1-6, 11 and 15 for “informalities.” The informalities listed by the Examiner relate to certain claim language that allegedly is “confusing and indefinite” (Final Rejection 2-3).

Appellant filed an “After Final Amendment” on April 13, 2006 seeking, *inter alia*, to amend the claims to overcome the objections noted in the Final Rejection.

In an Advisory Action mailed April 24, 2006, the Examiner refused entry of the claim amendments proposed in the After Final Amendment on the ground that such amendments would add new features and limitations to the claims.

In the Appeal Brief filed December 22, 2006, Appellant again addressed the objections. (Brief 11-13).

In the Examiner’s Answer mailed April 13, 2007, as to the objections, the Examiner stated “It is noted that the objections of the claims can not be appealed.” (Answer 17).

In addition, it is noted that the Evidence Appendix to the Appeal Brief includes new evidence to support Appellant’s position concerning the objections. (Brief 17). The Examiner has not indicated whether or not this new evidence would be entered and considered.

As indicated by the foregoing, the Examiner has raised an issue, in the form of an objection, of “confusing and indefinite” claim language. It is necessary to clarify and resolve this issue before the BPAI addresses the merits of the appeal. Therefore, it is necessary to remand the application to the Examiner so that the issue can be considered and addressed, as appropriate, by the Examiner and Appellant.

CONCLUSION

Accordingly, it is

ORDERED that this application be returned to the Examiner:

- 1) to clarify and resolve the objection that claims 1-6, 11 and 15 contain “confusing and indefinite” language;
- 2) if appropriate, to reopen prosecution;
- 3) to make a determination on whether or not the new evidence submitted with the Appeal Brief filed December 22, 2006 will be entered and considered; and
- 4) to take such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/lis

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